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OPEN MEETING AGENDA ITEM

ORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

Arizona Corporation Commission

DOCKETED

MAR 19 2014

DOCKETED BY

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AZ CORP COMMISSION
DOCKET CONTROL

2014 MAR 19 AM 8 44

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF FINANCING TO
INSTALL A WATER LINE FROM THE WELL
ON TIEMAN TO WELL NO. 1 ON TOWERS.

DOCKET NO. W-04254A-12-0204

ORIGINAL

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF FINANCING TO
PURCHASE THE WELL NO. 4 SITE AND THE
COMPANY VEHICLE.

DOCKET NO. W-04254A-12-0205

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF FINANCING FOR AN
8,000-GALLON HYDRO-PNEUMATIC TANK.

DOCKET NO. W-04254A-12-0206

IN THE MATTER OF THE RATE APPLICATION
OF MONTEZUMA RIMROCK WATER
COMPANY, LLC.

DOCKET NO. W-04254A-12-0207

JOHN E. DOUGHERTY,
COMPLAINANT,
V.

DOCKET NO. W-04254A-11-0323

MONTEZUMA RIMROCK WATER COMPANY,
LLC,
RESPONDENT.

IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF A RATE INCREASE.

DOCKET NO. W-04254A-08-0361


1
2 IN THE MATTER OF THE APPLICATION OF
3 MONTEZUMA RIMROCK WATER COMPANY,
4 LLC FOR APPROVAL OF A FINANCING
APPLICATION.

DOCKET NO. W-04254A-08-0362

**STAFF'S NOTICE OF FILING
PROPOSED ORDER**

5 Staff of the Arizona Corporation Commission ("Staff") hereby provides notice of filing the
6 attached revised proposed order for the Commission's consideration during the March 19, 2014 Open
7 Meeting. The revisions were made in the interest of clarity and are nonsubstantive.

8 RESPECTFULLY SUBMITTED this 19th day of March 2014.

9
10 
11 Charles H. Hains
12 Wesley C. Van Cleve
13 Attorneys, Legal Division
14 Arizona Corporation Commission
15 1200 West Washington Street
16 Phoenix, Arizona 85007
17 (602) 542-3402

18 Original and thirteen (13) copies
19 of the foregoing filed this
20 19th day of March 2014, with:

21 Docket Control
22 Arizona Corporation Commission
23 1200 West Washington Street
24 Phoenix, Arizona 85007

25 Copy of the foregoing EMAILED this
26 19th day of March 2014, to:

27 Todd C. Wiley - twiley@fclaw.com
28 Patricia Olsen - patsy@montezumawater.com
John E. Dougherty, III - jd.investigativemedia@gmail.com
John Hestand - john.hestand@azag.gov
Jana.tabeeek@azag.gov

Copy of the foregoing mailed this
19th day of March 2014, to:

Todd C. Wiley
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1 Patricia D. Olsen
2 Montezuma Rimrock Water Co.
3 3031 East Beaver Creek Road
4 Rimrock, Arizona 86335

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6 Rimrock, Arizona 86335

6 John Hestand, Assistant Attorney General
7 Office of the Attorney General
8 1275 West Washington
9 Phoenix, Arizona 85007

10 Rosanna Osorio

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

IN THE MATTER OF THE APPLICATION OF
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JOHN E. DOUGHERTY,

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COMPLAINANT,

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LLC,

RESPONDENT.

IN THE MATTER OF THE APPLICATION OF
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IN THE MATTER OF THE APPLICATION OF
MONTEZUMA RIMROCK WATER COMPANY,
LLC FOR APPROVAL OF A FINANCING
APPLICATION.

DOCKET NO. W-04254A-08-0362

DECISION NO. _____

ORDER

Open Meeting
March 19, 2014
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. Montezuma Rimrock Water Company, LLC ("Montezuma" or "Company") is an Arizona public service corporation authorized to provide water service in a community near Rimrock, Az. Montezuma has approximately 205 water customers.

2. On May 31, 2012, the Company filed an application with the Arizona Corporation Commission ("Commission" or "ACC") to increase its rates for water service. The Company also filed three financing applications. The Company subsequently filed several amendments to its rate application, and on April 12, 2013, the Company amended its financing applications.

3. In Utilities Division Staff's ("Staff") review of the rate application, Staff concluded that Montezuma is not recovering sufficient amounts in rates to cover expenses and support lease payments on the arsenic treatment facility and associated building. Based on a regulatory audit of the Company's finances, Staff recommended an increase in base rates as well as two surcharges for certain planned indebtedness.

4. Hearings on the base rate application and on other consolidated dockets were held on June 20-21 and June 24-26, 2013. Final briefs were submitted on September 20, 2013. A Recommended Opinion and Order has not yet been issued.

1 5. The underlying proceeding in the base rate case and consolidated dockets is a complex
2 matter that includes an application for a base rate increase, four financing applications, a complaint,
3 and a reopened rate case.

4 6. The Company originally requested a rate increase of 42.85 percent above test year
5 revenues as well as various surcharges. Staff recommends a 27.59 percent increase above test year
6 revenues as well as two surcharges. Staff's recommendation provides for the payment on the arsenic
7 facility leases in base rates. Montezuma subsequently accepted the Staff recommendation. John
8 Dougherty, an intervenor in the rate case and a complainant in the complaint matter, opposes any rate
9 increase generally and opposes granting any approvals relating to the leases on the arsenic treatment
10 facilities.

11 7. The Company's arsenic treatment facilities are currently in operation. On December
12 27, 2013, the Company filed a compliance report indicating that the Company had filed more than
13 one year of arsenic level data and that Montezuma is now in compliance with Arizona Department of
14 Environmental Quality's ("ADEQ") administrative order relating to arsenic.

15 8. On March 7, 2014, Montezuma filed a request for emergency/interim rate relief. In its
16 filing, the Company states that it does not have sufficient revenue to make the lease payments on its
17 Arsenic Treatment Facility to the leasing company, Financial Pacific Leasing. On March 13, 2014,
18 the Company docketed a copy of a demand letter from Financial Pacific which stated that an
19 immediate payment of \$2,824.80 is required in order to prevent acceleration of the lease and a
20 demand of payment in full in the amount of \$47,781.92. The Company's filing also indicates that
21 Financial Pacific Leasing has contacted the Company and requested voluntary surrender of the
22 Arsenic Treatment Facility for non-payment.

23 9. On March 11, 2014, Mr. Dougherty filed a response to the Company's application for
24 interim rate relief. Mr. Dougherty's response referred to the three criteria discussed by Attorney
25 General Opinion No. 71-17. Mr. Dougherty does not believe (1) that a sudden change has occurred
26 bringing on financial hardship, (2) that the Company has provided evidence demonstrating its
27 insolvency, and (3) that the Company's ability to maintain adequate service is in doubt. In
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1 conclusion, Mr. Dougherty asks the Commission to install an interim manager based on the
2 contention that interim management could access certain grant funds to finance arsenic treatment for
3 Montezuma.

4 10. Based upon concerns regarding the possible threat to public health and safety
5 presented by the potential loss of arsenic treatment, Staff contacted Financial Pacific to confirm the
6 status of the leasing company's plans regarding the non-payment. Staff spoke with representatives of
7 Financial Pacific. Based upon those discussions, Staff confirmed that Financial Pacific intends to
8 repossess the arsenic treatment facilities in the event that the Company continues nonpayment on the
9 lease.

10 11. Staff discussed with Financial Pacific the pendency of the base rate application and the
11 recommendations that had been made. Likewise, Staff discussed the possibility of interim rates
12 sufficient to permit Montezuma to bring its account current. Financial Pacific indicated that, if rates
13 were put in place (on an interim basis and followed with permanent rate relief), and if Montezuma's
14 account were made current, it would not pursue remedies unless Montezuma again falls into
15 delinquency.

16 12. Staff further inquired as to the lease for the building that houses the arsenic treatment
17 facility. The Company leases the building from Nile River Leasing, L.L.C. On March 13, 2014, the
18 Company provided a statement to Staff indicating that it has an overdue balance of \$2,515.34 as of
19 March 13, 2014.

20 13. Total indebtedness to both leasing companies is \$5,340.14.

21 14. If Financial Pacific were to pursue repossession or other similar remedies, it is
22 possible that such measures could be concluded relatively quickly.

23 15. Witnesses at the hearing in the base rate application and consolidated dockets stated
24 that the financial condition of Montezuma has effectively precluded essentially all other alternative
25 avenues of financing arsenic treatment at this point.

26 16. Staff notes that the Company was already authorized to pursue Water Infrastructure
27 Finance Authority of Arizona ("WIFA") financing to fund construction of arsenic treatment. Staff
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1 has reviewed the feasibility of financing from WIFA and concluded that, owing to the additional
2 costs of having to meet National Environmental Policy Act compliance, the cost of WIFA financing
3 is prohibitively expensive to both the Company and its ratepayers.

4 17. Additionally, witnesses at hearing testified that the Company does not currently have
5 sufficient cash flows to obtain a standard loan. Consequently, it is reasonable to conclude that the
6 current lease for arsenic treatment facilities represents the only remaining cost-effective means for
7 Montezuma to obtain arsenic treatment for the drinking water it supplies to its ratepayers.

8 18. The current state of ADEQ compliance for the Company is contingent upon providing
9 continuous arsenic treatment of its drinking water supplies. According to witness testimony,
10 Montezuma has narrowly avoided penalties by ADEQ for the lengthy period it took to implement
11 arsenic treatment. The Company may face ADEQ compliance issues if its arsenic treatment
12 equipment were abruptly removed at this point. Such compliance issues could further exacerbate the
13 financial distress confronting the Company.

14 19. Financial Pacific is apparently poised to pursue various measures against Montezuma
15 for nonpayment on the arsenic treatment facility lease. Such measures may occur very quickly,
16 providing little time for response.

17 20. The substantial financial consequences to the Company and, more importantly, the
18 threat to quality of service to ratepayers justify emergency/interim rate relief.

19 21. Rates collected pursuant to an emergency surcharge are subject to true-up once
20 permanent rates are approved in Montezuma's application for a base rate increase. Amounts
21 collected beyond what are approved in the base rate case would be subject to refund.

22 22. Staff does not believe that the appointment of an interim manager would be
23 appropriate at this time. With regard to the potential to access WIFA grant funds, it is Staff's
24 understanding that the grant funds have been depleted for a number of years.

25 23. Staff recommends approval of an emergency surcharge in the amount of \$10 per
26 customer per month which would provide additional revenues of approximately \$2,000 per month.
27 Staff further recommends that the surcharge should take immediate effect and that the Company
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1 should be authorized to do a special billing to accelerate collection of the surcharge. Staff
2 recommends that the Company should be required to post a bond in the amount of \$10.00.

3 24. Further, Staff recommends that the Company be ordered to apply the funds collected
4 under the surcharge solely to payment of the arsenic treatment facility and the associated building
5 leases.

6 **CONCLUSIONS OF LAW**

7 1. The Commission has jurisdiction over Montezuma Rimrock Water Company and over
8 the subject matter herein pursuant to Article XV, section 3 of the Arizona Constitution.

9 2. Appropriate notice of the proceeding and an appropriate opportunity to be heard have
10 been given in the manner prescribed by law.

11 3. The threat of repossession of essential arsenic treatment facilities in the event of
12 nonpayment of amounts owed on the lease for the arsenic treatment facilities constitutes a sudden
13 change or hardship for Montezuma.

14 4. The demand for payment on past due amounts owed on the lease for arsenic treatment
15 and the threat of repossession of the arsenic treatment facilities jeopardize Montezuma's ability to
16 provide arsenic free drinking water to its ratepayers.

17 5. The evidence adduced at hearing in the base rate application demonstrates that, owing
18 to Montezuma's financial condition, the lease for the arsenic treatment facility is Montezuma's only
19 remaining option to implement arsenic treatment at this point.

20 6. The facts and circumstances demonstrate that Montezuma faces an emergency
21 situation that justifies emergency/interim rate relief.

22 7. Staff's recommendations herein are reasonable and should be adopted.

23 8. The Commission, having reviewed the Company's request and the responsive filings
24 made by Intervenor Dougherty and Staff, finds that it is in the public interest to permit an interim
25 emergency surcharge to preserve the quality of service to ratepayers and to maintain the status quo
26 during the pendency of the application for a base rate increase.

27 **ORDER**

1 IT IS THEREFORE ORDERED that Montezuma Rimrock Water Company may implement
2 an emergency surcharge of \$10 per month per customer.

3 IT IS FURTHER ORDERED that the emergency surcharge will terminate upon the effective
4 date that rates approved in Montezuma Rimrock Water Company's application for a base rate
5 increase may be charged.

6 IT IS FURTHER ORDERED that Montezuma Rimrock Water Company may utilize funds
7 collected pursuant to the interim emergency surcharge only toward payment of its arsenic treatment
8 facility and associated building leases.

9 IT IS FURTHER ORDERED that Montezuma Rimrock Water Company is authorized to
10 undertake a special billing to initiate the surcharge immediately upon the effective date of this
11 Decision.

12 IT IS FURTHER ORDERED that rates collected pursuant to the emergency surcharge are
13 subject to true-up once rates are approved in Montezuma Rimrock Water Company's application for
14 a base rate increase. Amounts collected beyond what are approved in the permanent base rate case
15 are subject to refund.

16 IT IS FURTHER ORDERED that Montezuma Rimrock Water Company shall mail notice of
17 the approved interim emergency surcharge to its customers, in a form and manner acceptable to Staff,
18 to accompany the special billing set forth in Finding of Fact No. 21.

19 IT IS FURTHER ORDERED that Montezuma Rimrock Water Company shall obtain a
20 performance bond, or other comparable financial instrument in the amount of \$10, and shall provide
21 the original to the Commission's Business Office for safekeeping and file copies with Docket Control
22 as a compliance item in this docket prior to charging the interim surcharge.

23 IT IS FURTHER ORDERED that Montezuma Rimrock Water Company is put on notice that
24 the emergency surcharge put into effect by this order is interim and solely intended to maintain the
25 status quo during the pendency of the permanent base rate application. The Commission's approval
26 of interim rates does not prevent the Commission from approving base rates in the permanent rate
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1 case that may preclude full recovery of amounts related to any lease entered into by Montezuma
2 Rimrock Water Company.

3 IT IS FURTHER ORDERED that this decision shall become effective immediately.

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BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JODI JERICH, Executive
Director of the Arizona Corporation Commission, have
hereunto, set my hand and caused the official seal of this
Commission to be affixed at the Capitol, in the City of Phoenix,
this _____ day of _____, 2014.

JODI JERICH
EXECUTIVE DIRECTOR

DISSENT: _____

DISSENT: _____

SMO: \CHH

SERVICE LIST FOR: Montezuma Rimrock Water Company
DOCKET NOS. W-04254A-08-0361; W-04254A-08-0362; W-04254A-11-0323;
W-04254A-12-0204; W-04254A-12-0205; W-04254A-12-0206; W-04254A-12-0207

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